

Relief from Addition to Tax for Underpayment of Estimated Income Tax by Individuals Affected by Amendment to Section 461(l)(1)(B)

Notice 2021-8

SECTION 1. PURPOSE

This notice provides a waiver of the addition to tax under § 6654 of the Internal Revenue Code (Code) for underpayment of estimated income tax by individual taxpayers, where the underpayment is attributable to the amendment to § 461(l)(1)(B) of the Code made by section 2304(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (March 27, 2020). To qualify for the relief provided in section 4.01 of this notice, the individual taxpayer must fulfill the requirements stated in section 4.02 of this notice.

SECTION 2. SCOPE

.01 Limited relief for addition to tax attributable to amendment to § 461(l)(1)(B). The relief provided in section 4.01 of this notice is limited to waiving an amount of the addition to tax under § 6654 that is attributable solely to the CARES Act amendment to § 461(l)(1)(B). The relief provided does not waive the addition to tax under § 6654 that is attributable to other CARES Act provisions, including the CARES Act amendment to § 172(b) of the Code. The relief is limited to individual taxpayers whose circumstance is described in section 3.02(3)(a) of this notice and is subject to other limitations provided in this notice.

.02 Relief available only for certain installments due on or before July 15, 2020. The relief provided in section 4.01 of this notice applies only for the purpose of calculating

installments of estimated income tax of an individual taxpayer that were due on or before July 15, 2020, with respect to the taxable year that began during 2019.

Regarding calculating the amounts of installments of estimated income tax of an individual taxpayer due after July 15, 2020, § 6654 applies in the normal course, and section 4.01 of this notice does not apply. Thus, in the case of a fiscal-year individual taxpayer, for the purpose of calculating any required installment amount for the taxable year that began in 2019 that is due after July 15, 2020, the individual taxpayer must calculate the required annual payment by using the income tax figures on the original income tax return of the taxable year that began in 2019, as if no relief under section 4.01 of this notice were provided.

.03 Relief available to certain trusts and estates. The relief described in section 4.01 of this notice is available to any qualifying estate or trust that is treated as an individual for purposes of § 6654 and that is subject to the § 6654 estimated tax payment requirements with respect to its income. For purposes of this notice, any reference to an individual includes a reference to a trust or estate that is treated as an individual for purposes of § 6654.

SECTION 3. BACKGROUND

.01 Underpayment of estimated income tax by individual.

(1) Estimated income tax and liability for addition to tax. Generally, the Code requires taxpayers to pay Federal income taxes as they earn income. To the extent these taxes are not withheld from wages or other income, a taxpayer normally must pay estimated income tax on a quarterly basis. Individual taxpayers who fail to make a

sufficient or timely payment of estimated income tax are liable for an addition to tax under § 6654(a).

(2) Quarterly payments of estimated income tax. Section 6654 provides that, in the case of an individual, estimated income tax is generally required to be paid in four installments, each in the amount of 25 percent of the required annual payment. Generally, under § 6654(d)(1)(B), the required annual payment is the lesser of (i) 90 percent of the tax shown on the return for the taxable year; or (ii) 100 percent of the tax shown on the return of the individual for the preceding taxable year (110 percent if the individual's adjusted gross income on the previous year's return exceeded \$150,000), provided that the preceding taxable year was 12 months in duration and the individual filed a return for that preceding taxable year. An individual taxpayer whose income varies during the taxable year may be able to use the annualized income installment method described in § 6654(d)(2) to reduce the installment amount for installments for the taxable year that are due earlier, consequently increasing the installment amount for installments for the taxable year that are due later.

(3) Required annual payment based on original return. The required annual payment is based on the tax shown on the original income tax return (original return) for the taxable year, rather than the tax shown on any amended income tax return (amended return). In § 6654(d)(1)(B), the term "return for the taxable year" refers to the original return for the taxable year and does not refer to an amended return filed after the filing due date of the return for the taxable year. See, e.g., *Mendes v. Commissioner*, 121 T.C. 308, 324 (2003) ("We have repeatedly held that a taxpayer's estimated tax liability is based upon the taxpayer's tax liability as stated on the original

tax return as filed . . .”). Thus, for example, for the 2019 taxable year, the return for the taxable year of a calendar-year taxpayer is the return filed by July 15, 2020, or by October 15, 2020, if the taxpayer received an extension of time to file under § 6081 of the Code. Similarly, § 1.6654-2(b)(3) of the Income Tax Regulations provides that, with respect to an individual, the term “return for the preceding taxable year” means the individual’s income tax return for that preceding taxable year required by § 6012(a)(1) of the Code and the individual’s self-employment tax return for that preceding year which is required by § 6017 of the Code (that is, the original return of the individual for that preceding taxable year) and does not refer to an amended return filed after the filing due date of that return. For purposes of § 6654, an amended return filed before the filing due date is considered the original return, but an amended return filed after the filing due date is not considered the original return. However, a joint return filed after the filing due date that replaces previously filed separate returns is considered the original return. See § 6013(b)(1); Rev. Rul. 80-355, 1980-2 C.B. 374 (Dec. 22, 1980).

(4) Due dates for installments of estimated income tax. Estimated income tax installments of an individual having a calendar-year taxable year generally are due on April 15, June 15, and September 15 of the taxable year, and on January 15 of the following year. See § 6654(c)(2). For an individual with a fiscal-year taxable year, the due dates of installments of estimated income tax are determined by substituting corresponding months. See § 6654(k)(1). Certain taxpayers are subject to specialized installment amounts and due dates. See §§ 6654(h), (i), and (j).

(5) Exceptions to the addition to tax. An individual taxpayer will not be subject to the addition to tax under § 6654(a) if an exception applies. Under § 6654(e)(1), no

addition to tax will be imposed on an individual taxpayer if the taxpayer owes less than \$1,000 in tax, after subtracting tax withheld on wages. Under § 6654(e)(2), an individual will not be subject to an addition to tax if (i) the individual did not have any tax liability for the previous taxable year, (ii) the preceding taxable year was 12 months, and (iii) the individual was a citizen or resident of the United States throughout the preceding taxable year. Under § 6654(e)(3)(A), the addition to tax will not be imposed with respect to any underpayment to the extent the Secretary of the Treasury or his delegate (Secretary) “determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.”

.02 Limitation on excess business losses of noncorporate taxpayers. Section 461(l)(1)(B) disallows the deduction of an excess business loss (as defined in section 3.02(1) of this notice) in the taxable year in which the loss is incurred.

(1) Excess business loss. The term “excess business loss” is defined generally as the excess (if any) of (a) the aggregate deductions for the taxable year attributable to trades or businesses of a non-corporate taxpayer, over (b) the sum of (i) the aggregate gross income or gain for the taxable year attributable to such trades or businesses of such taxpayer, and (ii) \$250,000 (\$500,000 in the case of a joint return) subject to adjustment for inflation for taxable years beginning after 2018. See § 461(l)(3)(A) and (C). An excess business loss is determined without regard to any deductions, gross income, or gains attributable to any trade or business of performing services as an employee. See § 461(l)(3)(A). Capital loss deductions are not taken into account in computing an excess business loss. See § 461(l)(3)(B)(i). The amount of capital gain

taken into account in calculating the excess business loss cannot exceed the lesser of capital gain net income attributable to a trade or business or capital gain net income. See § 461(l)(3)(B)(ii). Any disallowed excess business loss is treated as a net operating loss (NOL) for the taxable year for purposes of determining any NOL carryover under § 172(b) for subsequent taxable years. See § 461(l)(2).

(2) CARES Act amendment to § 461(l)(1)(B). Prior to enactment of the CARES Act, the disallowance under § 461(l)(1)(B) applied to any taxable year beginning after December 31, 2017, and before January 1, 2026. Section 2304(a) of the CARES Act amended § 461(l)(1)(B) to make the disallowance applicable only for any taxable year beginning after December 31, 2020, and before January 1, 2026.

(3) Potential underpayments of estimated income tax resulting from CARES Act amendment to § 461(l)(1)(B).

(a) Addition to tax. An individual taxpayer may have underpaid one or more installments of estimated income tax for the taxable year that began in 2019, if the individual taxpayer anticipated having a lower required annual payment after utilizing an NOL carryover attributable to a prior-year excess business loss that, before the enactment of the CARES Act, would have been available as an NOL carryover to reduce taxable income in the taxable year that began in 2019 but now is no longer available due to the CARES Act amendment to § 461(l)(1)(B). Such an individual taxpayer may be liable for an addition to tax for underpayment of estimated income tax for the taxable year that began in 2019, if the individual taxpayer does not have zero tax liability for the previous taxable year or does not otherwise qualify for the exception provided in § 6654(e)(2).

(b) Exception to addition to tax based on equity and good conscience considerations. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have determined that it would be against equity and good conscience to impose an addition to tax under § 6654 for certain underpayments of estimated income tax resulting from changes made by the CARES Act to § 461(l)(1)(B). The relief provided in section 4.01 of this notice is intended for individual taxpayers whose circumstance is described in section 3.02(3)(a) of this notice.

(4) Potential underpayments of estimated income tax resulting from CARES Act amendment to § 172(b).

(a) Five-year NOL carryback and waiver. Section 2303(b) of the CARES Act amended § 172(b) to provide a five-year carryback for NOLs arising in taxable years beginning after December 31, 2017, and before January 1, 2021. See § 172(b)(1)(D)(i). Under § 172(b)(3), taxpayers, including corporate and individual taxpayers, may elect to forgo the new five-year carryback of such NOLs. The Treasury Department and the IRS understand that, in the absence of an election under § 172(b)(3), corporate and individual taxpayers may have underpaid one or more installments of estimated income tax for the taxable year that began in 2019 due to consequences similar to those described in section 3.02(3)(a) of this notice.

(b) No exception to addition to tax based on equity and good conscience considerations. The Treasury Department and the IRS have determined that the effect on estimated income tax requirements of the CARES Act amendment to § 461(l)(1)(B) is distinguishable from the effect of the CARES Act amendment to § 172(b). Specifically, the Treasury Department and the IRS note that an individual taxpayer

cannot make an election to opt out of the effect of the CARES Act amendment to § 461(l)(1)(B). In contrast, taxpayers may elect under § 172(b)(3) to forgo the new five-year carryback for NOLs. As a result, the Treasury Department and the IRS have determined that it would not be against equity and good conscience to impose an addition to tax under § 6654 for underpayments of estimated income tax resulting from changes made by the CARES Act to § 172(b), and thus have decided not to provide relief with respect to the new NOL carryback that taxpayers may elect to forgo.

SECTION 4. LIMITED WAIVER OF ADDITION TO TAX FOR UNDERPAYMENT OF ESTIMATED INCOME TAX

.01 Waiver. If an individual taxpayer's circumstance is described in section 3.02(3)(a) of this notice and the individual taxpayer satisfies all of the qualification requirements described in section 4.02 of this notice, a portion of the addition to tax under § 6654 that is attributable to the CARES Act amendment to § 461(l)(1)(B) will be waived for the individual taxpayer's installments of estimated income tax that were due on or before July 15, 2020, with respect to any taxable year that began during 2019. The amount of the waiver is determined under section 4.02(3)(b) of this notice. This waiver is provided under the authority granted to the Secretary under § 6654(e)(3)(A).

.02 Qualification requirements. To qualify for the waiver provided in section 4.01 of this notice, an individual taxpayer must satisfy all of the requirements described in this section 4.02.

(1) 2019 taxable year. The individual taxpayer must have a 12-month taxable year for the taxable year that began in 2019.

(2) Timely filed 2018 Federal income tax return. The individual taxpayer must have timely filed an original income tax return for the taxable year that began during 2018 that reported an excess business loss on Form 461, *Limitation on Business Losses*.

(3) Qualifying waiver request. The individual taxpayer must make a request for the waiver provided in section 4.01 of this notice in accordance with all of the requirements described in this section 4.02(3).

(a) Timely filed 2019 Federal income tax return. The individual taxpayer must timely file an original income tax return for the affected taxable year that began during 2019 and correctly account for the CARES Act amendment to § 461(l)(1)(B) on the original income tax return for that taxable year.

(b) Complete 2019 Form 2210 or Form 2210-F. The individual taxpayer must complete the 2019 version of Form 2210, *Underpayment of Estimated Tax by Individuals, Estates, and Trusts*, or the 2019 version of Form 2210-F, *Underpayment of Estimated Tax by Farmers and Fishermen*, as applicable, for the affected taxable year that began during 2019.

(i) Required calculation of applicable taxes. A taxpayer requesting relief under this notice must determine lines 1 through 3 of Form 2210, or lines 1 through 5 of Form 2210-F, by calculating the figures and amount of applicable taxes resulting from a revised amount of taxable income. For this purpose, the term “revised amount of taxable income” means the taxable income of the individual taxpayer, as reported on the original income tax return (as described in section 3.01(3) of this notice) for the taxable year that began in 2019, reduced (but not below zero) by the Taxable Income Reduction Amount (as defined in section 4.03(1) of this notice).

(ii) Calculation of required annual payment and installment payments. The individual taxpayer must use the resulting current year tax (line 4 of Form 2210, or line 6 of Form 2210-F) to calculate the required annual payment and the required installment payments for installments due on or before July 15, 2020.

(iii) Calculation involving annualized income installment method. An individual taxpayer using the annualized income installment method under § 6654(d)(2) must also reduce (but not below zero) the amount in each column of line 13 of Schedule AI of Form 2210 by the Taxable Income Reduction Amount (as defined in section 4.03(1) of this notice) if the column relates to an installment due on or before July 15, 2020.

(c) Attachments to Form 2210 or Form 2210-F. The individual taxpayer must attach to the Form 2210 or the Form 2210-F:

(i) The Form 461 filed as part of the timely filed original income tax return for the taxable year that began in 2018;

(ii) The Form 461 filed as part of the most recent amended income tax return filed before March 27, 2020, for the taxable year that began in 2018, if an amended income tax return for that taxable year was filed before March 27, 2020; and

(iii) A statement detailing how the taxpayer determined its Taxable Income Reduction Amount (as defined in section 4.03(1) of this notice).

(d) Designation. The individual taxpayer must include “Notice 2021-8” on the top of the Form 2210 or Form 2210-F.

(e) Submission of forms. The individual taxpayer must submit the Form 2210 or Form 2210-F either with an original or amended income tax return for the affected taxable year that began in 2019, or, if an original income tax return for that taxable year

has already been filed and the § 6654 addition to tax that is to be the subject of the relief has already been paid, then with a Form 843, *Claim for Refund and Request for Abatement*. The Form 2210 or Form 2210-F may be submitted electronically with an electronically filed Form 1040-X, *Amended U.S. Individual Income Tax Return*.

.03 Taxable Income Reduction Amount.

(1) General definition. The term “Taxable Income Reduction Amount” means, regarding an individual taxpayer, the lesser of:

(a) The amount by which the 2018 EBL (as defined in section 4.03(2)(a) of this notice) would have reduced (but not below zero) the Pre-CARES Act 2018 Taxable Income (as defined in section 4.03(2)(b) of this notice) if the 2018 EBL were not disallowed; and

(b) The amount equal to 80 percent of the taxable income that would have been determined for the taxable year that began in 2019 if the CARES Act had not been enacted, computed without regard to the deduction allowable under § 172.

(2) Additional definitions. For purposes of this section 4.03, regarding an individual taxpayer:

(a) 2018 EBL. The term “2018 EBL” means the following:

(i) If the individual taxpayer did not file an amended income tax return before March 27, 2020, for the taxable year that began in 2018, the term “2018 EBL” means the excess business loss reported on the individual taxpayer’s timely filed original income tax return for the taxable year that began in 2018.

(ii) If the individual taxpayer filed an amended income tax return before March 27, 2020, for the taxable year that began in 2018, the term “2018 EBL” means the lesser of:

(A) The excess business loss reported on the individual taxpayer’s timely filed original income tax return for the taxable year that began in 2018; and

(B) The excess business loss reported on the most recent amended income tax return filed before March 27, 2020, for the taxable year that began in 2018.

However, if the amounts described in sections 4.03(2)(a)(ii)(A) and (B) of this notice are equal, the term “2018 EBL” means the amount stated in section 4.03(2)(a)(ii)(B) of this notice.

(b) Pre-CARES Act 2018 Taxable Income. The term “Pre-CARES Act 2018 Taxable Income” means the following:

(i) If the 2018 EBL is based on the taxpayer’s timely filed original income tax return, as described in section 4.03(2)(a)(i) or section 4.03(2)(a)(ii)(A) of this notice, the term “Pre-CARES Act 2018 Taxable Income” means the amount of taxable income reported on the timely filed original income tax return of the individual taxpayer for the taxable year that began in 2018 (that is, the amount on line 10 of the 2018 Form 1040, U.S. Individual Income Tax Return, or the comparable line of any other applicable 2018 income tax return).

(ii) If the 2018 EBL is based on the taxpayer’s most recent amended income tax return filed before March 27, 2020, as described in section 4.03(2)(a)(ii)(B) of this notice, the term “Pre-CARES Act 2018 Taxable Income” means the amount of taxable

income of the individual taxpayer reported on the most recent amended income tax return filed before March 27, 2020, for the taxable year that began in 2018.

(3) Examples. The examples in sections 4.03(3)(b) and (c) of this notice illustrate the determination of the Taxable Income Reduction Amount as defined in section 4.03(1) of this notice.

(a) Assumptions applicable to both examples. For the purpose of these examples, assume all of the following:

(i) The taxpayer is an individual calendar-year taxpayer.

(ii) The taxpayer satisfies all conditions for the waiver described in section 4.02 of this notice.

(iii) No loss limitation rule applies to the taxpayer.

(iv) The taxpayer, before the enactment of the CARES Act, would have had taxable income (determined without regard to the deduction allowable under § 172) in the 2019 taxable year of \$1,000,000, so that the amount stated in section 4.03(1)(b) (80 percent of the taxable income that would have been determined for the taxable year that began in 2019 if the CARES Act had not been enacted and computed without regard to the deduction allowable under § 172) is \$800,000.

(b) Example 1. Assume that the taxpayer has a 2018 EBL of \$1,000,000 and Pre-CARES Act 2018 Taxable Income of \$1,500,000. As a result, the amount stated in section 4.03(1)(a) (the amount by which the 2018 EBL would reduce the Pre-CARES Act 2018 Taxable Income if the 2018 EBL were not disallowed) is \$1,000,000. The Taxable Income Reduction Amount is \$800,000, the lesser of \$1,000,000 and \$800,000.

(c) Example 2. Assume that the taxpayer has a 2018 EBL of \$1,000,000 and Pre-CARES Act 2018 Taxable Income of \$700,000. As a result, the amount stated in section 4.03(1)(a) (the amount by which the 2018 EBL would reduce the Pre-CARES Act 2018 Taxable Income if the 2018 EBL were not disallowed) is \$700,000. The Taxable Income Reduction Amount is \$700,000, the lesser of \$700,000 and \$800,000.

SECTION 5. ADDITIONAL INFORMATION

Visit [IRS.gov/Form2210](https://www.irs.gov/Form2210), [IRS.gov/Form2210F](https://www.irs.gov/Form2210F), or [IRS.gov](https://www.irs.gov) more generally for forms, instructions, and additional information.

The principal author of this notice is Alexander Wu of the Office of the Associate Chief Counsel (Procedure and Administration). For further information, please contact Mr. Wu at (202) 317-6845 (not a toll-free number).